

APPEAL NO. 93659

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE. ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 30, 1993, in (city), Texas, before hearing officer (hearing officer) to determine the single issue of whether the claimant had a compensable mental trauma injury on (date of injury). The appellant, hereinafter claimant, appeals the hearing officer's determination in favor of the respondent, hereinafter carrier.

DECISION

We affirm the hearing officer's decision and order.

The claimant was a legal secretary employed by an attorney, (Mr. A). She testified that on (date of injury), she took some papers into Mr. A's office where he was showing a gun to some people. She said that when she entered the office Mr. A said, in reference to her, "[w]atch out for her--she's got PMS [premenstrual syndrome] that's worse than any gun." The claimant said Mr. A had said many worse things to her previously, but that this comment was "the final hit on the nail with the hammer" which upset her and caused her to seek medical help. The symptoms she had experienced as a result of the incident included depression, weight gain and loss, headaches, and sleeping problems. She was treated by (Dr. C), M.D., and was hospitalized for eight days in April of 1993.

The claimant stated that she had had many prior problems which she had kept "walled up," including a partial hysterectomy, the deaths of her mother and stepmother, and childhood emotional and sexual abuse. Her therapist, (Ms. S) testified that the claimant suffered from post traumatic stress disorder, in which one traumatic event can trigger memories of others. She said that in her opinion there had been a direct and immediate change in claimant's level of functioning after the "PMS" incident at work. An April 20, 1993, letter from Dr. C stated that claimant's symptoms "probably originated with some severe childhood abuse issues, however, in my professional opinion they were greatly exacerbated by the sexual harassment that [claimant] was subjected to in the workplace." Mr. A testified that he did not precisely remember the incident in question, although he recalled claimant becoming upset over a payroll matter and telling him that she had PMS. The claimant said that Mr. A frequently had used abusive and vulgar language to her in the past, which he acknowledged, although he contended that claimant also used similar language. When asked why she stayed on with Mr. A, claimant said that she did not have a high school diploma and would not be able to find a job that paid as well elsewhere. Ms. S stated her opinion that a victim of trauma such as claimant may develop a set of coping patterns that set them up to continue in a position where they continue to be victimized.

The hearing officer made the following pertinent findings of fact and conclusions of law:

FINDINGS OF FACT

3. On (date of injury), while [Mr. A] was showing a gun to some men in his office, the claimant walked into his office to take him some paperwork, and he [Mr. A] made a comment to the effect that the claimant had PMS that was worse than any gun.
4. Regardless of whether [Mr. A's] comment, as described in Finding of Fact #3 above, was or was not a legitimate personnel action, the claimant's testimony that she was offended, mentally traumatized, or otherwise injured by such comment was not credible.
5. The claimant did not sustain any mental trauma injury on or after (date of injury) as a result of the comment made by [Mr. A] about the claimant, as described in Finding of Fact #3 above.

CONCLUSIONS OF LAW

3. The claimant did not sustain a compensable mental trauma injury on (date of injury) while in the course and scope of her employment with [Mr. A].

The claimant contends that the hearing officer's statement of evidence erroneously states that claimant and Mr. A "both became used to conversing with one another using profane language, some of which could be highly offensive to many people, none of which, apparently, was offensive to either one of them." The claimant contends that the evidence shows that she was offended by such language and that her therapist stated that backing down or agreeing with Mr. A constituted the typical pattern of an abuse victim. Mr. A testified at the hearing that the common language of the office included profanity and that "that's how [claimant] talked." Ms. S also said at the hearing that she was not aware that such language was all on Mr. A's part. The hearing officer, as sole judge of the relevance and materiality of the evidence and of its weight and credibility, Section 410.165(a), 1989 Act, was entitled to resolve any conflicts in the evidence in one party's favor. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied).

The claimant also contends that the above findings of fact and conclusions of law are against the great weight and preponderance of the evidence, citing in particular the documentary medical evidence in the record and the testimony of Ms. S. The claimant also notes that no finding or conclusion was made as to whether the incident in question was the result of a legitimate personnel action.

The 1989 Act in Section 408.006(a) states the express legislative intent that "nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries." This panel has previously observed that most of the statutory provisions of the 1989 Act pertinent to mental trauma injury are substantially similar to those in the prior statute and that therefore most of the Texas case law interpreting such provisions is probably applicable under the 1989 Act. Texas Workers' Compensation Commission

Appeal No. 92189, decided June 25, 1992. The exception is the 1989 Act's new provision, contained in Section 408.006(b), that a mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle. Regardless of whether the legitimate personnel action defense is raised in a mental trauma case, in order to recover, a claimant must establish that a mental trauma injury arose in the course and scope of employment and was traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955). As with any alleged work-related injury, it is necessary to establish a causal relationship between the event causing the alleged injury and the ultimate condition. Garcia v. Texas Indemnity Insurance Company, 209 S.W.2d 333 (Tex. 1948).

The hearing officer's determination in this case, in essence, was that such causation had not been established. Our review of the record, including claimant's testimony and the medical evidence detailing prior and unfortunate problems claimant had had, lead us to the conclusion that the hearing officer's decision was supported by sufficient evidence. We decline to reverse the decision of the hearing officer where it is not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The claimant also alleges the hearing officer erred in forcing the claimant to produce to the carrier and the court notes she used in presenting her case, while not requiring such notes of the carrier. The record of the hearing reflects that the claimant used notes while testifying, that the hearing officer upon carrier's objection stated that the carrier could see such notes, but that she refused to make them part of the record. We find no error on the part of the hearing officer in taking such action.

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge